UNION OF INDIA & ANR.

v.

BHASKARENDU DATTA MAJUMDAR

(Civil Appeal No. 7116 of 2010)

AUGUST 27 2010

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

Service Law – Appointment/Selection – Selection of the candidate by Selection Board – Appointments Committee not granting approval to the selection – Writ petition – allowed by Single Judge of High Court – Writ appeal allowed holding that order of Appointments Committee was unreasoned – Plea of the candidate that the rejection of selection was biased and based on certain enquiries and investigations against him in the past – On appeal, held: The rejection of selection of the candidate was not correct as he was exonerated in the inquiries/investigations and his annual report for the relevant years was good – Appointments Committee also failed to show reasons for rejecting the selection of the candidate.

The Respondent was shortlisted by Public Enterprises Selection Board (PSEB), and placed at serial No-1 for selection on the post of Director (Marketing) with the appellant-Corporation. Clearance was issued by the Central Vigilance Commission and the Ministry concerned forwarded his name to the Appointments Committee of the Cabinet (ACC) for final approval. But the Cabinet Secretary who was earlier the Managing Director of the appellant-Corporation, scuttled the appointment of the respondent, taking note of some serious allegations leveled against him at one point of time.

The respondent challenged the order, by filing writ petition, which was dismissed by the Single Judge of the

A **High Court. The LPA was allowed by Division Bench of the High Court holding that ACC had given no reasons for its order. Therefore, the instant appeal was filed.**

Dismissing the appeal, the Court

B **HELD: It has not been denied that after the various enquiries and investigations had been completed and the respondent was exonerated on merits, he obtained two promotions, and the entry with regard to his doubtful integrity which had been made on account of the** C **pending matters, had also been removed. The Division Bench of the High Court had also called for the confidential record of the respondent and observed that he had been assessed as "very good" for the years 2001-02 and 2002-03, "Excellent" for the year 2003-04 and** D **"Outstanding" for the years 2004-05 and 2005-06. These were the crucial years in so far as the respondent's case for promotion to Director (Marketing) was concerned. The Division Bench also observed, that the Union of India had not been able to show any record indicating the reasons** E **as to why the ACC had differed with the opinion of the PESB leading to the only inference that no reasons whatsoever had been recorded. Therefore, there is no merit in the instant appeal. [Para 8] [549-C-F]**

F *Union of India and Ors. vs. N.P.Dhamania and Ors.* **1995 Suppl. (1) SCC 1 – relied on.**

Union of India and Anr. vs. Samar Singh and Ors. **1996 (10) SCC 555 – held inapplicable.**

G *Chief Executive Officer vs. Biswa Bhusan Nandi* **2008 (10) SCC *161;* *Union of India and Ors. vs. Ram Kumar Thakur* 2009(1) SCC 122 – referred to.**

Case Law Reference:

H **2008 (10) SCC 161 referred to. Para 5**

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2009(1) SCC 122	**referred to.**	**Para 5**	
1995 Suppl. (1) SCC 1	**relied on.**	**Paras 6 and 7**	
1996 (10) SCC 555	**held inapplicable.**	**Para 7**	

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7116 of 2010.

From the Judgment & Order dated 18.05.2009 of the High Court of Delhi at New Delhi in LPA No. 168 of 2009.

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P.P. Malhotra, ASG. Harish Chandra, SWA Qadri, S. Bakshi, R. Bastiasn, S. Kaushik Manish Bhardwaj, Arvind Kumar Sharma for the Appellants.

Ashok H. Desai, Rajiv K. Garg, Vineet Garg, Annam D.N. Rao for the Respondent. D

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. Delay condoned.

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2. Leave granted.

3. This appeal by way of special leave has been filed by the Union of India and the State Trading Corporation impugning the judgment of the Division Bench of the High Court of Delhi dated 18th May 2009 whereby the judgment of the Single Judge dated 9th January 2009 has been set aside and a direction has been issued that the case of the respondent for appointment as Director Marketing in the State Trading Corporation be re-considered in the manner indicated therein. The facts of the case are as under: F G

4. The respondent Bhaskarendu Datta Majumdar joined the services of the State Trading Corporation (hereinafter called "Corporation") in April 2001 as Executive Secretary to the Chairman-cum-Managing Director of the Corporation and was H

A on the relevant date working as Chief General Manager. A post of Director (Marketing) having fallen vacant, the respondent applied for the post on the 27th December 2005. Interviews were held on 4th March 2006 by the Public Enterprises Selection Board (PESB for short) and two candidates were B shortlisted, the respondent being at serial No.1, and one Neeraj Mishra at serial No.2 in order of preference. Consequent to the selection, the Central Vigilance Commissioner also issued a clearance for the respondent on or around 26th March 2006, and it is the case of the respondent that the Department of C Commerce, being the Ministry concerned, forwarded his name to the Appointments Committee of the Cabinet (ACC for short) for final approval. Further, it is the case of the respondent that his name has been endorsed by the Home Minister as the second Member of the ACC, but the incumbent Cabinet D Secretary who had earlier been the Managing Director of the Corporation, scuttled his appointment taking note of some serious allegations which at one point of time had been levelled against him. It appears that in 1994-95 the respondent had been dragged into various departmental enquiries and two criminal investigations by the Central Bureau of Investigation at the E instance of the said officer, but he was exonerated of any misdoing and the adverse entries of doubtful integrity were thereby deleted from his confidential roll. As a consequence of what had happened, Neeraj Misra who was at serial No.2 was proposed for appointment but finally even his name too was F dropped and a direction was issued by the ACC to undertake a fresh process for filling up the vacancy. The respondent thereupon filed a Writ Petition in the Delhi High Court which was dismissed by the learned Single Judge holding that it was the exclusive jurisdiction of the ACC to assess the suitability of a G candidate and the court could not interfere in this discretion except in a case of proven mala fides. The Letters Patent Appeal that followed has been allowed and that judgment is now challenged before us. The primary reason that weighed with the Division Bench was that the ACC had given no reasons

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whatsoever, not even on the file, as to why the recommendation of the PESB was being ignored. A

5. Mr. Malhotra, the learned Additional Solicitor General for the appellant Union of India, has submitted that as the ACC was the final authority to make the selection and appointment, it alone had the jurisdiction to determine the suitability of an officer and a decision taken by the committee was not open to challenge except on grounds of mala fide or for other exceptional reasons. He has pointed out that there was no plausible reason for the Division Bench to have interfered, more particularly as there was no rule which required that reasons be recorded by the ACC while differing with the opinion of the PESB. Reliance for this assertion has been placed on *Union of India & Anr. vs. Samar Singh & Ors.* 1996 (10) SCC 555, *Chief Executive Officer vs. Biswa Bhusan Nandi* 2008 (10) SCC 161 and *Union of India and Ors. vs. Ram Kumar Thakur* 2009(1) SCC 122. B C D

6. Before the Division Bench, the primary issue raised on behalf of the respondent herein was that his name had been recommended by all the authorities and two members of the ACC but in the final analysis the ACC had not accepted the recommendation and it was thus incumbent on the ACC to offer reasons for differing with the proposal made by the PESB and though the said reasons were not required to be communicated to the officer concerned, it was nonetheless open to the Court to examine the record to see if any reason had indeed been recorded. Reliance was also placed on the decision of this Court in *Union of India and Ors. vs. N.P.Dhamania & Ors.* 1995 Suppl. (1) SCC 1 in which it has been held that though the ACC was the appointing authority and therefore entitled to differ with the recommendation of the PESB, it was necessary to give reasons for doing so to obviate any chance of arbitrariness and for that purpose the Court could look into the record to satisfy itself. E F G

7. We have considered the arguments advanced by the H

A learned counsel for the parties. We find that the judgment in Samar Singh's case (supra) is inapplicable. In this matter the name of the officer had not been included in the panel prepared by the Special Committee with the result that his case was not considered by the ACC. A perusal of the judgment would reveal
B that the primary issue raised before the court was as to the exclusion of the officer from the panel prepared by the Standing Committee. We find that the other judgments cited by the learned ASG are not relevant to the present matter and do not merit any discussion whatsoever. On the contrary,
C *N.P.Dhamania* case (supra) is almost identical not only on facts but even on the legal issues raised. It has been held as under:

> "19. Notwithstanding the fact that it is open to AAC which alone is the appointing authority and not the Minister
D concerned, as urged by the respondent to differ from the recommendations of the DPC, it must give reasons for so differing to ward off any attack of arbitrariness. Those reasons will have to be recorded in the file. It requires to be stated at this stage that we have perused the file in the
E instant case. We find no reasons have been recorded for differing from the recommendations of the DPC. That is why the tribunal also inter alia observes in the impugned judgment as under:
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> F However, the counsel for the respondent felt helpless in the matter and he failed to provide us any inkling of what prevailed with the ACC in dropping the petitioner and four others out of the select panel of 59 officers.
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> 20. If the file had contained reasons something could be
G said in favour of the appellant. But, that is not the case here. Then the question would be whether the reasons recorded are required to be communicated to the officer concerned. Our answer is in the negative. There is no need to communicate those reasons. When challenged it is

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always open to the authority concerned to produce the necessary records before the Court. A

22. ACC may reconsider these cases within 3 months in the light of the observations at page 7,10 and above and if found suitable, may give promotion with effect from the date, their immediate junior officer was promoted with consequential benefits of seniority and salary etc." B

8. These observations apply fully to the facts of this case. The Division Bench had also noticed, (and it has not been denied by the Union of India) that after the various enquiries C and investigations had been completed and the respondent exonerated on merits he had obtained two promotions, first as General Manager and thereafter as Chief General Manager, and the entry with regard to his doubtful integrity which had been made on account of the pending matters, had also been D removed. The Division Bench had also called for the confidential record of the respondent and observed that he had been assessed as "very good" for the years 2001-02 and 2002-03, "Excellent" for the year 2003-04 and "Outstanding" for the years 2004-05 and 2005-06. It goes without saying that these E were the crucial years in so far as the respondent's case for promotion to Director (Marketing) was concerned. The Division Bench also observed, that though requested, the counsel for the Union of India had not been able to show any record indicating the reasons as to why the ACC had differed with the F opinion of the PESB, leading to the only inference that no reasons whatsoever had been recorded. We are, therefore, of the opinion that there is no merit in this appeal. It is accordingly dismissed with no order as to costs.

K.K.T Appeal dismissed.